IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 18024 of 2004

Between:

1 A. Sitamahalakshmi,W/o. Late Akella Venkta Sri Ramamurthy,

R/o. FF2,Vighnaswara Plaza, D.No. 47-3-2, Dwarakanagar,
Visakhapatnam-16,

2 Sri Akella Venkata Purushotham, S/o Late A.V.S.Ramamurthy,

R/o. FF2,Vighnaswara Plaxa, D.No. 47-3-2, Dwarakanagar,
Visakhapatnam-16.

3 Sri Akella SriVenkata Satyanarayana, S/o Late A.V.S.Ramamurthy,

R/o. FF2,Vighnaswara Plaxa, D.No. 47-3-2, Dwarakanagar,
Visakhapatnam-16.

4 Smt. Prakki Gopalarathnam, W/o.Sri P.D.Bhaskar, R/o. FF2,Vighnaswara

Plaza, D.No. 47-3-2, Dwarakanagar, Visakhapatnam-16.
5 Smt. Valiveti Suseeladevi, S/o Sri V. Rama Chandra Prasad,

R/o. FF2,Vighnaswara Plaza, D.No. 47-3-2, Dwarakanagar,
Visakhapatnam-16.

6 Smt. Yanamandra Venkata Bhunu Lakshmi,W/o.Dr.N.Srinivas,

R/o. FF2,Vighnaswara Plaxa, D.No. 47-3-2, Dwarakanagar,
Visakhapatnam-16.

7 Smt Namuduri Venkata lalitha Ramani, W/oDr.N.Srinivas,

R/o. FF2,Vighnaswara Plaxa, D.No. 47-3-2, Dwarakanagar,
Visakhapatnam-16.

8 Sri Grandi Ganesh, S/oLate Suryanarayana,

R/o.D.No.45/58-3/6,RatnaNilayam, Narsimhanagar,
Visakhapatnam-16.

All are represented by Agreement cum GPA holder, M/s.Sai theertha Builders, rep by Proprprix, Smt.A.Sailaja Venugopal Naidu, W/o. A. Venugopa Naidu, aged 30 years, Occ: Business, R/o..D.No.2-39-13, Sector X, M.V.P.Colony, Visakhapatnam - 17.

..... PETITIONER(S)

AND

The Commissioner, Municipal Corporation of Visakhapatnam, Visakhapatnam

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandmaus by declaring the condition No. 1 imposed in building permission vide proceedings BA No. 2004-ba-10163/ACP0II/G4, dt. 3-9-2004 passed by the respondent as illegal, arbitrary and unconstitutional.

Counsel for the Petitioners: MR.B.VIJAYSEN REDDY

Counsel for the Respondent : MR.T.S.VENKATARAMANA

The Court at the stage of admission made the following :

ORDER:

Petitioners 1 to 7 obtained permission for construction of ground plus three upper

floors in 'A' schedule property, vide proceedings-BA No.6 of 2001, dated 24.01.2001. Thereafter, the 8th petitioner has also acquired the property, which forms part of 'B' schedule property and adjacent to the 'A' schedule property. Hence, the petitioners sought for a revised permission, which was granted by the respondent-Corporation vide proceedings - BA No.2004-ba-10163/ACP-II/G4, dated 03.09.2004, subject to the following conditions.

a. The applicant should remove the extra balconies beyond 0.9 mtrs within one month failing which Municipal Corporation will remove the extra balconies portions beyond 0.9 mtrs as shown in the plans without any notice. The applicant should give an undertaking that he will not approach any Court for alteration of violated portions of balconies.

b. The applicant should remove the cross walls in the ground floor and should keep entire stilt floor for parking only before commencement of additional construction.

c. If the applicant fails to comply with the conditions the VMC can revoke the permission at any time.

Questioning the condition No.1, the present wit petition is filed contending that while granting permission, the entire FSI of the balconies was taken into consideration for restricting the floor FSI area, and again calling for removal of the balconies is not in tune with the same. It is further contended that the petitioners can always agitate their grievance before the appropriate forum and that they cannot be prevented from approaching the Court of Law by imposing condition No.1. It is also contended that in view of condition No.1, the respondents may likely to remove the constructions without following the due process of law.

Heard the learned counsel for the petitioner.

It is always open for the petitioners to make a representation to the respondents bringing the said facts to their notice, that on acquiring of the 'B" schedule properties, the balconies will not have any projection and are within their properties, which satisfy the requirements of the FSI. On filing any such representation, the respondents shall consider the same and pass appropriate orders in accordance with law. It is made clear that without issuing notice and following the due procedure prescribed under the Municipal Corporation Act, the respondents shall not remove the balconies, in the light of the condition 'a', referred

to above. If the petitioners are still aggrieved, it is open for them to approach the competent Court of Civil jurisdiction seeking appropriate relief.

Subject to above observations, the writ petition is disposed of. There shall be no order as to costs.

06-10-2004

ts

To

1. The Commissioner, Municipal Corporation of Visakhapatnam, Visakhapatnam

2 Two C.D. Copies.